

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2000-476-C - ORDER NO. 2001-283

APRIL 2, 2001

IN RE: Application of LCR Telecommunications,	)	ORDER
LLC for a Certificate of Public Convenience	)	GRANTING
and Necessity to Operate as a Reseller of	)	CERTIFICATE FOR
Interexchange Telecommunications Services	)	LONG DISTANCE
within the State of South Carolina.	)	AUTHORITY

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of LCR Telecommunications, LLC ("LCR" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications services within the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1999) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed LCR to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of LCR's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on March 16, 2001, at 11:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The

Honorable William Saunders, Chairman, presided. LCR was represented by John J. Pringle, Jr., Esquire. Adelaide D. Kline, Staff Counsel, represented the Commission Staff. Roy H. Barnette, Auditor, and Colanthia B. Alvarez, Rates Analyst, Telecommunications area, testified on behalf of the Commission Staff.

Mr. Martin J. Tibbitts, Managing Member and President, LCR Telecommunications, LLC, appeared and testified in support of the Application. Mr. Tibbitts testified that he is an owner and officer of LCR. The record reveals he helped found LCR in 1997. Prior to his involvement with LCR, he served as a founding partner of Least Cost Routing, LTD, a California limited partnership that brokered domestic long distance. Upon receiving certification from the Commission, LCR plans to operate as a reseller of intrastate interexchange telecommunications services on a statewide basis and to offer a full range of "1+" interexchange telecommunications services on a resale basis. Specifically, LCR seeks authority to provide IntraLATA and InterLATA message Toll Service ("MTS"), and directory assistance services. The record reveals that LCR is a Michigan limited liability company that has received authorization to transact business within the State of South Carolina. LCR is currently authorized to provide telecommunications services in sixteen states and at the time of the hearing also had applications pending in a number of additional states.

Regarding the Company's technical ability to offer telecommunications services in South Carolina, Mr. Tibbitts testified that the Company now has over 10,000 customers in sixteen states. He said the LCR's billing is done by an outsourced contract with a company that handles the data and call rating. Mr. Tibbitts said his Company will

market its services via personal and telephone contact by LCR's employees and/or authorized distributors. He said LCR utilizes telemarketing and provides strict oversight of the telemarketing agencies it employs. He further said LCR understands that it will be responsible for the marketing practices of any telemarketers with whom LCR contracts. Mr. Tibbitts said LCR verifies that a customer wishes to switch its services to LCR by using taped third party verification (TPV). He explained that during the TPV, LCR explicitly asks the individual if she/he has the authority to make decisions involving the choice of a long distance carrier. Mr. Tibbitts acknowledged his Company's commitment to the marketing guidelines of the Federal Communications Commission (FCC) and compliance with the Commission's marketing guidelines. He said his Company offers its services to residential and business customers but primarily targets small businesses.

LCR operates a customer service center, which handles all requests, from 8:30 a.m. to 6:00 p.m. central standard time Monday through Friday. LCR also has a voice mail option available twenty-four hours a day, seven days a week, as well as an email option for customer service. The record reveals that LCR currently has a policy of responding to any billing or service inquiries within twenty-four hours. In the event the inquiry requires further investigation on the part of the service representative, the customer is advised of the reasons for the need for additional inquiries and is given a date certain by which the inquiry will be addressed. Customers may reach the Company's toll-free telephone number by dialing 1-877-697-5588. David Hepp is LCR's customer service contact person.

Mr. Tibbitts offered that LCR intends to utilize Alliance Services, AT&T Communications, and Frontier as its underlying carriers. He confirmed that LCR will choose its underlying carriers based upon the quality of service of the carrier properly certified by the Commission to provide such service. The Company's regulatory contact person is Mary Demsky.

As to LCR's managerial abilities to offer the services it proposes to offer in South Carolina, Mr. Tibbitts testified that the Company's key management team also includes John D. Mills, a founding member, and Loren J. Tibbitts, the third founding member. Mr. Mills has extensive business management experience as founder and CEO of National Computer Equipment Corporation. Mr. Loren J. Tibbitts also has extensive business management experience in the automotive industry.

In support of LCR's financial ability to provide the services it seeks to provide in South Carolina, Mr. Tibbitts testified that LCR is in sound financial condition and has sufficient financial capability to maintain the services to be offered. He stated the Company has a \$500,000 line of credit from which it has borrowed \$40-50,000 to date. He said the two other investors have personal assets that can be pledged to the business. He said the Company's financial contact person will be Aimee Moran, the Chief Financial Officer of LCR.

Mr. Barnette testified as to his findings of the Audit Department's review of LCR unaudited financial statements that were submitted as part of the Company's Application. He stated he reviewed financial statements included in the Application that were dated as of December 31, 2000. According to Mr. Barnette, the Company's December 31, 2000,

financial statements indicated a company that is in fair position financially. He testified that in order for LCR to be financially successful, it will need to continue to generate profits from operations, locate additional sources of capital investment, or a combination thereof. He said the capital could come in the form of additional paid in capital by the stockholders.

The purpose of Ms. Alvarez's testimony was to present to the Commission the findings of the Utilities Department regarding the Application of LCR for a Certificate of Public Convenience and Necessity. Additionally, the purpose of her review was to ensure that the Company's tariff complied with the Commission's regulations, policies and orders. Ms. Alvarez's testimony consisted of comments and suggested modifications to the Company's tariff. Mr. Tibbitts agreed the Company would make all the changes to LCR's tariff as recommended by Commission Staff witness Colanthia B. Alvarez. The Company also agreed to add its email address and telephone number to each tariff page.

According to the Application and Mr. Tibbitts's testimony, LCR requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) so that LCR can maintain its records outside of South Carolina. The Company wishes to maintain its books and records at its headquarters in Michigan; it will keep South Carolina specific records. Mr. Tibbitts stated that the Company is aware and agrees to abide by the Commission's regulation that requires that these records be made available for examination by the Commission at reasonable hours. LCR also requested that it be allowed to keep its books and financial records according to the Generally Accepted Accounting Principles (GAAP) rather than according to the Uniform System of Accounts (USOA). According to Tibbitts, LCR does

not intend to offer prepaid calling cards at this time but his Company is aware of the Commission's bond requirement regarding the sale of prepaid calling cards and is willing to post the required bond should the Company decided to offer prepaid calling cards in the future.

According to Mr. Tibbitts, LCR has never had authority denied in any state where it has applied for authority nor has the Company had authority revoked in any state where it has been granted authority. Additionally, he said that LCR has never been the subject of an investigation, fined or sanctioned by a state or federal regulatory body. According to the testimony, LCR has not marketed its services in South Carolina prior to receiving certification. Mr. Tibbitts testified that the Company has not received revenues from the completion of intrastate calls in South Carolina prior to receiving certification. Additionally, he said that LCR has never been the subject of an investigation , fined or sanctioned by a state or federal regulatory body. Finally, Mr. Tibbitts testified LCR will abide by all the Commission's rules, regulations and Orders upon the Company receiving certification to operate as a reseller of intrastate interexchange telecommunications services in South Carolina. The Company agreed to provide the Commission with the final Tariff, a copy of its Bill Form, according to 26 S. C. Code Ann. Regs. 103-612.2.2 and 103-622.1 (1976).

After full consideration of the applicable law, the Company's application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

### **FINDINGS OF FACT**

1. LCR is organized as a limited liability company under the laws of the State of Michigan and is authorized to do business as a foreign limited liability company in the State of South Carolina by the Secretary of State.

2. LCR operates as a non facilities-based reseller of interexchange services and wishes to provide its services in South Carolina.

3. LCR has the experience, capability, and financial resources to provide the services as described in its Application.

### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to LCR to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for LCR for its resale of interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. LCR shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. LCR shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 1999).

4. If it has not already done so by the date of issuance of this Order, LCR shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, LCR shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 102-622.1 (1976) with its final Tariff.

5. LCR is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.



6. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. LCR shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If LCR changes underlying carriers, it shall notify the Commission in writing.

8. LCR shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports can be found at the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). The title of this form is "Annual Information on South Carolina Operations For Interexchange Companies and AOS". Be advised that the Commission's annual report for telecommunication companies requires the filing of intrastate revenues and intrastate expenses.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. LCR shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at

[www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms); this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

10. With regard to the origination and termination of toll calls within the same LATA, LCR shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dial parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. By its Application and testimony at the hearing, LCR requested a waiver from the Commission's requirement to maintain its books within the State of South Carolina according to 26 S.C. Code Ann. Regs. 103-610 (1976). The Commission grants the Company's request to waive the record keeping regulation so that its books and records may be kept at its principal office and headquarters in Michigan. The Commission also grants LCR the opportunity to keep its books and records in accordance with GAAP rather than the USOA.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

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13. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director  
(SEAL)